

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

| | | |
|--|---|----------------------|
| ELOUISE PEPION COBELL, <u>et al.</u> , |) | |
| |) | |
| Plaintiffs, |) | |
| |) | |
| v. |) | Case No. 1:96CV01285 |
| |) | (Judge Lamberth) |
| GALE A. NORTON, Secretary of the Interior, |) | |
| <u>et al.</u> , |) | |
| |) | |
| Defendants. |) | |
| _____ |) | |

**DEPARTMENT OF THE INTERIOR'S RESPONSE AND OBJECTION TO
THE FIRST INVESTIGATIVE REPORT OF THE SPECIAL MASTER
REGARDING DEFENDANT'S RESPONSE TO DOCUMENT
REQUEST 9 OF ATTACHMENT B TO THE SUBPOENA DUCES TECUM**

Pursuant to Fed. R. Civ. P. 53(e)(2), the Department of the Interior ("Interior") respectfully submits this response and objection to the "First Investigative Report Of The Special Master Regarding Defendant's Response To Document Request 9 Of Attachment B To The Subpoena Duces Tecum," issued by the Special Master to Interior on March 26, 2001 ("Report").¹

For the reasons stated below, Interior respectfully objects to the conclusions drawn by the Report that the lack of "final reports" produced in response to "Document Request No. 9 of Attachment B" to the subpoena indicates that (i) "it is difficult to comprehend how any official at Interior could have exercised any care, much less great care in ascertaining the accuracy of the

¹ The Special Master issued his report on November 29, 2001. The Interior Defendants' response is currently due, at the earliest, by December 13, 2001, pursuant to Fed. R. Civ. P. 53(e)(2) and 6(a), assuming that the report was filed with the court on November 29, 2001.

information filed with the Court" relating to the completion of the 11 HLIP tasks² referenced in the Report; (ii) a very real question exists about what the Interior is doing to carry out the Records Management section of the HLIP; and (iii) there is virtually nothing in writing (other than the quarterly reports themselves) to give the Court a measure of confidence that the allegedly "completed" HLIP-2000 tasks identified in Document Request No. 9 have actually been done. Report, p. 12.

BACKGROUND

In connection with the Special Master's role of overseeing Interior's compliance with orders relating to discovery and document retention, he has been investigating Interior's records management functions. On February 14, 2001, the Special Master served Interior with a subpoena commanding the production of certain categories of documents related to Interior's efforts to comply with this Court's August 12, 1999 document retention order.³ Exhibit 1.

On March 26, 2001, the Special Master served Interior with Attachment B, which

² Comments from Interior's senior management and reports provided to Interior by EDS suggest that the decentralized management approach previously employed by Interior under the HLIP has demonstrable shortcomings. Declaration of J. Steven Griles, para 16, filed as Exhibit 1 to Interior's Memorandum in Support of Motion to Permit Filing Modified Trust Reform Status Report for the Period Ending October 31, 2001. References to the HLIP in this filing are not intended to suggest a reversal of the declaration of Mr. Griles or the filing which it supports. Rather, these references correlate to similar references in the Special Master's Report.

³ Attachment A to the subpoena contained 24 requests for documentation of the activities of the Office of Trust Records, including requests for copies of all requests for records assistance by the BIA locations, copies of all records management training courses that have been developed by OTR and notes taken by OTR staff during site visits. Exhibit 1. The Departments of Justice and Interior were requested by the Special Master to add Request No. 24, which sought notes taken by OTR staff. We understand that request was oral and was made during a meeting in February 2001. A production plan was transmitted to the Special Master on February 22, 2001 by the Department of Justice. Exhibit 2.

included requests for documents related to Interior's efforts under Subproject 8 of its High-Level Implementation Plan ("HLIP 2000"). Exhibit 3. Document Request No. 9 to Attachment B - the focus of the Special Master's Report - sought "any and all final reports submitted to the Department of Interior" for certain records management sub-projects which Interior had designated as "completed".⁴

Other requests in Attachment B sought documentation of activities under the HLIP 2000 that took forms other than final reports. For instance, Request B-1, as defined in Attachment B, sought among other documents, "any and all written documents used by the agency to plan, develop or prepare any of the programs . . . tasks and milestones set out in the HLIP 2000 Records Management Sub-project." Request B-8 sought, among other documents, "all documents concerning the major milestones" in completing certain tasks under the HLIP 2000. (See Exhibit 3 and Interior's Production Plan in Exhibit 4.)

Document Request No. 9 of Attachment B "was designed to reach behind Interior's representations (and the Special Trustee's verifications) to the Court that these eleven tasks had been completed, i.e., that steps necessary to execute the task had been identified, implemented, and the outlined objective had been fulfilled." Report, p. 3. In response to Attachment B of the subpoena and after consultation with the Special Master, Interior prepared and executed a plan designed to produce all non-privileged documents which might be responsive to Attachment B. Exhibit 4.

⁴ The "completed" tasks are listed on p. 3 of the Special Master's Report. The term "final report" was not defined in Attachment B to the Special Master's subpoena.

DISCUSSION

The Report makes two significant points. First, it notes that the documents produced by Interior include no final reports⁵ on the completion of 11 tasks under Subproject 8 of the HLIP even though those tasks were reported as complete in Interior's quarterly report. It concludes that the lack of such reports means that Interior lacked mechanisms to ensure that the HLIP tasks were done in a timely and efficient manner. Second, the Report notes apparent inconsistencies in the quarterly reports and concludes that there is nothing in writing to confirm that reportedly completed tasks are, in fact, completed.

With regard to the lack of final reports, we concede that we are unaware of documents labeled as such. As we explain, however, we believe Interior did produce documents that meet the definition of final report adopted in the Special Master's Report. In any event, the lack of designated final reports does not, we believe, demonstrate that Interior lacked mechanisms to ensure timely and efficient completion of HLIP tasks.

As to the apparent inconsistencies identified by the Report, it is true that the terminology used in the quarterly reports creates ambiguities. As we explain below, we do not believe the reports are misleading. Read in their entirety – and perhaps with more care than ought to be necessary – the quarterly reports accurately disclose the status of the tasks.

A. The Absence of Final Reports

The Report describes the Special Master's review of the 182 documents identified as responsive to request B-9 and concludes that the absence of “final reports” within the meaning of

⁵ The Report does seem to conclude that Interior produced final reports, under the Special Master's definition, for Tasks G and K. Report, p.7.

Request B-9 means that “no documents or group of documents” support Interior’s report that it has completed certain tasks. Report, pp. 8-9. Interior agrees that it produced no “final reports,” labeled as such, for the relevant tasks of Subproject 8 pursuant to Document Request No. B-9. However, Interior believes that there may exist documents relating to the completion of the questioned tasks, and that these documents may be found among the other documents produced in response to other document requests in Attachment B. For instance, Interior was required to produce all documents concerning the major milestones in completing certain tasks under the HLIP. (See Request B-8-Exhibit 3.) Therefore, in order to best address the Special Master’s conclusion, Interior intends to review the documents submitted to the Special Master in response to the subpoena, and if it finds other documents which evidence the completion of any of the eleven tasks at issue, it will submit them to the Special Master and request him to amend his report.⁶

Moreover, and perhaps more importantly for purposes of accurately informing the Court of Interior’s progress, the absence of a “final report” stating that a task has been completed does not mean that the particular task was not, in fact, completed. We are unaware of any requirement that the completion of tasks must be documented by final reports other than through the Quarterly Reports submitted to the Court. Therefore, there was no reason for OTR to separately generate written final reports whenever it completed a task under the HLIP, so long as it was

⁶ Interior produced approximately 118,000 pages in response to the subpoena (approximately 29,000 pages in response to Attachment A, and approximately 89,000 pages in response to Attachment B.) Approximately 182 documents were produced in response to Document Request No. 9 of Attachment B. Therefore, in responding to Attachment B, Interior did not reproduce documents already submitted. Interior informed the Special Master of this decision in its production plan. Exhibit 4 - Production Plan, dated April 12, 2001, p. 3.

preparing and submitting Quarterly Report drafts for incorporation into Interior's Quarterly Reports.

B. Apparent Inconsistencies

The Report takes issue with certain apparent inconsistencies in Interior's quarterly reports. While there are some ambiguities in the reports as a result of confusing terminology, we do not believe they are misleading when read in context. For example, the Report states, at page 5, that in the Third Quarterly Report, Task U is represented as "ongoing" (page 26) and, in a chart (page 28), as having been "completed" on December 31, 1999. Task U is defined as the "initiation of training and technical assistance for contracted and compacted trust records." (Emphasis supplied.) Hence, the fact that training and technical assistance were ongoing in August of 2000 does not mean that the initiation of training and technical assistance had not occurred in December 1999. The Report notes that "initiation" of activity can be completed with relatively little effort, and suggests that defining a task as "initiating" an activity may not be very helpful. Thus, the quarterly reports went further and reported when the activities that had been initiated were also ongoing. While this may have been confusing; it is not, for that reason, misleading.⁷

⁷ The Report also cites other examples of tasks which were to "initiate" or "begin" certain projects. It is not misleading to state that those tasks are "completed" if the "initiation" of those tasks has been completed.

For example, Task T was to "establish evaluation teams and to begin cyclic evaluations of records." The substantive description of Task T in the Fourth Quarterly Report, p. 39, reveals that Interior is reporting that cyclic evaluations of records was begun. Moreover, in response to Attachment A of the subpoena, Interior had produced to the Special Master a Site Visit Report for the Southern Pueblos Agency which indicates that the evaluation of records was begun on April 27, 2000. Exhibit 5.

Similarly, it is not misleading to state that Task G which was "to initiate development
(continued...)"

The Report also questions the representation that Task K had been completed by hiring 12 records management specialists (though the defined task did not require any particular number of specialists to be hired). (Exhibit 6). Report, pp. 9-10. However, the documents – Ken Rossman's February 28, 2000 e-mail (Exhibit 7) – indicate that 12 specialists had been hired by January/February 2000. Due to movement within OTR and normal attrition, this number fluctuated after that date until April 2001, when Interior reported that it had 12 record management specialists in place. The issue of staffing was reported monthly in the Reports from OTR to the Special Trustee. Although the number of records management specialists was in flux, this does not indicate that 12 records management specialists were not hired by January/February 2000.

CONCLUSION

Although it appears that no "final reports," designated as such, exist, Interior believes that the absence of such documents does not demonstrate either that it lacked mechanisms to ensure timely and efficient completion of tasks or that its quarterly reports are misleading. In any event, Interior will review and analyze the documents produced to the Special Master and bring to his attention documents which may be relevant to the completion of the tasks discussed so that he may modify his report, if appropriate.

⁷(...continued)
of records control schedules" was completed when Interior began developing records control schedules. Interior indeed represents on p.10 of the Records Retention Report that initial draft record control schedules "were developed and submitted to OST and BIA management and the CIO in September 1998." Although the task is described as ongoing, it is not misleading for Interior to have stated in the summary chart that the task - the initiation of development of records management controls - has been completed.

Respectfully submitted,

ROBERT D. McCALLUM, JR.
Assistant Attorney General
STUART E. SCHIFFER
Deputy Assistant Attorney General
J. CHRISTOPHER KOHN
D.C. Bar No. 212357
Director


SANDRA P. SPOONER

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OF COUNSEL:
Sabrina A. McCarthy
Department of the Interior
Office of the Solicitor
Washington, DC 20240

DATE: December 13, 2001

CERTIFICATE OF SERVICE

I declare under penalty of perjury that, on December 13, 2001, I served the foregoing
**Department Of The Interior's Response To The First Investigative Report Of The Special
Master Regarding Interior Defendants' Response To Document Request No. 9 Of
Attachment B To The Subpoena Duces Tecum** by facsimile upon:

Keith Harper, Esq.
Native American Rights Fund
1712 N Street, NW
Washington, DC 20036-2976
202-822-0068

Dennis M Gingold, Esq.
Mark Brown, Esq.
1275 Pennsylvania Ave., NW
9th Floor
Washington, DC 20004
202-381-2372

and by facsimile and mail upon:

Alan L. Balaran, Esq.
Special Master
1717 Pennsylvania Ave., NW, 12th Floor
Washington, DC 20006
(202) 986-8477

and by hand:

Joseph Kieffer, III
410 7th Street, N.W.
The Lansburgh, Apt. 705
Washington, D.C. 20004

and by U.S. Mail upon:

Elliott Levitas, Esq.
1100 Peachtree Street, Suite 2800
Atlanta, GA 30309-4530

A handwritten signature in black ink, reading "K. P. Kingston". The signature is written in a cursive, flowing style with a long horizontal line extending from the end of the name.

Issued by the
United States District Court
 DISTRICT OF COLUMBIA

SUBPOENA IN A CIVIL CASE

Cobell et al. v.

CASE NUMBER: 1 96-1285

Babbitt et al.

To: *PHILIP M. BROWN, CASE NO. 100, SEC. INTERIOR*

- ☐ YOU ARE COMMANDED to appear in the United States District Court at the place, date, and time specified below to testify in the above case.

| | |
|--------------------|---------------|
| PLACE OF TESTIMONY | COURTROOM |
| | DATE AND TIME |

- ☐ YOU ARE COMMANDED to appear at the place, date, and time specified below to testify at the taking of a deposition in the above case.

| | |
|---------------------|---------------|
| PLACE OF DEPOSITION | DATE AND TIME |
|---------------------|---------------|

- ☒ YOU ARE COMMANDED to produce and permit inspection and copying of the following documents or objects at the place, date, and time specified below (list documents or objects): See Ex. A (Attached)

| | |
|--|---|
| PLACE 1717 Pennsylvania Ave, NW 12th Floor Washington, DC 20006 | DATE AND TIME 02/26/01 No later than 5:00 PM |
|--|---|

- ☐ YOU ARE COMMANDED to permit inspection of the following premises at the date and time specified below.

| | |
|----------|---------------|
| PREMISES | DATE AND TIME |
|----------|---------------|

Any organization not a party to this suit is subpoenaed for the taking of a deposition shall designate one or more officers, directors, or managing agents, or other persons who consent to testify on its behalf, and may set forth, for each person designated, the matters on which the person will testify. Federal Rules of Civil Procedure, 30(b)(6)

| | |
|---|---------------|
| ISSUING OFFICER SIGNATURE AND TITLE (INDICATE IF ATTORNEY FOR PLAINTIFF OR DEPENDANT) <i>Alan L. Balaran, Special Master</i> | DATE 02/14/01 |
|---|---------------|

ISSUING OFFICER'S NAME, ADDRESS, AND PHONE NUMBER Alan L. Balaran, Special Master
 1717 Penn. Ave., NW 12th Fl. Washington, DC 20006 (202) 466-5010

(See Rule 45, Federal Rules of Civil Procedure, Parts C & D on Reverse)

1 If action is pending in district other than district of issuance, state district under case number.

SECRETARY CAROL NORTON

Exhibit 'A' to the ~~Philip A. Brooks~~ Subpoena Duces Tecum

1. All documents justifying the budgets for Fiscal Years 1999 through 2003;
2. Copies of any Congressional report language accompanying all funds appropriated which impact the Office of Trust Records from 1999 forward;
3. Copies of all Financial Plans and Annual Work Plans prepared for Fiscal Years 1999 through 2001;
4. Copies of all Status of Obligation reports for the OTR program;
5. Copies of all requisitions submitted (whether purchased or not) for warehousing documents, accounting temps, bar coding, computers for staff, telephones and voice mail for staff; file cabinets/steel storage for the BIA regional and agency field offices; and Chavarria Dunn & Lamey, LLC (CDL) inventories;
6. All documents reflecting the current status of the imaging contract;
7. Copies of the inventories of trust records stored in the Albuquerque warehouses;
8. All documents reflecting any plans to update these inventories or to implement any new technology to assure inventory completeness;
9. Copies of all inventories prepared by CDL in their capacity as contractors to OTR;
10. A list of all third-party contractors engaged by OTR to assist with records management and a copy of all such contracts;
11. Copies of the Triage Report that was generated in 1999;
12. Copy of the telephone survey follow up conducted in December 1999 and January 2000 regarding records in jeopardy;
13. Copies of all disaster reports including, but not limited to, the Fort Belknap fire and the Fort Berthold water problems;
14. Copies of all requests for records assistance by the BIA locations and OTR's responses thereto;
15. Copies of all "pack and haul" reports;
16. Listing of all records sent to NARA by location. Please identify the specific Region/Agency sending the records, the types of records sent by each Region/Agency and the NARA locations to which they were sent;

SEC. CASE NO. 10-10-10

Exhibit 'A' to the Phillip A. Brooks Subpoena Duces Tecum
Page 2

17. Copies of all policies and procedures, in final or in draft form, in place for records management for the Office of the Special Trustee (e.g., the Office of the Special Trustee Manual);
18. Copies of all policies in final or in draft form for BIA replacing the Bureau of Indian Affairs Manual (BIAM) 15 and 16;
19. Copies of the most recent FEDSIM report;
20. Copies of all policies and procedures, whether in draft or final form, concerning the Indian trust record policies of MMS, BLM or any other DOI agency;
21. Copies of all records management training courses that have been developed by OTR;
22. A report of all records management training sessions held to date for OTR staff and a list of the participants of this training by location;
23. Copies of OST quarterly, semi-annual and annual reports to DOI or to Congress that impact trust records.



Environment and Natural Resources Division

*Environmental Enforcement Section
P.O. Box 7611
Washington, DC 20044-7611*

*Telephone (202) 514-3637
Facsimile (202) 514-4180*

Via Facsimile Transmission and U.S. Mail

February 22, 2001

Alan Balaran, Esq.
Special Master
1717 Pennsylvania Avenue, N.W.
12th Floor
Washington, D.C. 20006

Re: Cobell v. Babbitt, Civil Action No. 96-1285

Dear Mr. Balaran:

As discussed in our February 20, 2001 meeting, I am writing to provide the Department of the Interior's plan for responding to the subpoena you issued to the Secretary of the Interior on February 14, 2001. As you know, Interior has spent substantial time over the last week and a half developing its plan for gathering and producing the documents requested by the subpoena.

After careful consideration, we have developed a plan that divides the requests into three tiers. Each of these tiers will be provided separately. The first tier of documents will be produced February 26, 2001. Interior cannot, however, produce the documents called for in the other documents requests on February 26, 2001 because the identification, collection, copying, and production of those documents cannot be completed within the time available. Therefore, we propose to produce the second tier of documents on March 15, 2001 and the third tier of documents on April 7, 2001. The specific description of the searches Interior will conduct and its proposed plan are provided in the attached memorandum.

As I indicated in my voicemail, we would greatly appreciate clarification as to whether we must file a formal motion for extension of time to respond to the subpoena for the production of documents, or whether you will consider our compliance with the schedule in the attached plan to constitute compliance with the deadline for producing documents in response to the subpoena.

In addition, as discussed at our meeting on February 20, 2001, Interior will be filing a motion requesting the clarification of the procedures for the remainder of the investigations and seeking a postponement of the interviews currently scheduled on March 5, March 7, and March 12. We anticipate filing that motion on Tuesday, February 27, 2001.

I greatly appreciate the assistance and guidance you provided during our meeting of February 20, 2001 and look forward to resolving any further issues related to this subpoena or the interviews.

Sincerely,



A handwritten signature in black ink, appearing to read 'Sarah D. Himmelhoch', with a long horizontal line extending to the right.

Sarah D. Himmelhoch

cc: Dennis Gingold, Esq. (by facsimile, 202-318-2372)
Sabrina McCarthy (by facsimile, 202-219-0559)



U.S. Department of Justice

Environment and Natural Resources Division

Environmental Enforcement Section
P.O. Box 7611
Washington, DC 20044-7611

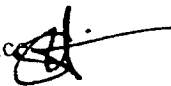
Telephone (202) 514-0180
Facsimile (202) 305-0274

February 22 2001

MEMORANDUM

To: Tom Slonaker, Special Trustee
Jim Douglas, Chief of Staff, Office of Special Trustee
Sharon Blackwell, Deputy Commissioner for Indian Affairs
Arthur Gary, Acting Director, Trust Management Improvement Project
Sue Ellen Woolridge, Deputy Chief of Staff
Robert Lamb, Deputy Assistant Secretary, Policy, Management and Budget
Fay Iudicello, Acting Executive Secretary

Through: Sabrina McCarthy, Assistant Solicitor

From: Sarah Himmelhoch, Sr. Counsel, U.S. Department of Justice 

Re: Cobell v. Babbitt: Response to Subpoenas Issued by the Special Master

As you are aware, the Special Master has served the Secretary of the Interior with a subpoena for the production of documents related to upcoming interviews of employees of the Office of Trust Records. After several internal meetings, on February 20, 2001, the attorneys on the Cobell team met with the Special Master to clarify those requests and to establish the schedule for responding. On February 21, 2001, we held additional meetings to develop and agree upon a schedule in light of the Special Master's instructions. I am writing now to advise you of the obligation of the Department of the Interior to respond to those requests and to provide advice and assistance in formulating your responses. The subpoena currently requires the production of documents on or before **February 26, 2001**. We have advised the Special Master that we will not be able to meet that deadline and have committed to provide him a schedule that we can meet.

The subpoena calls for the production of 25 categories of documents. For purposes of proposing a schedule to the Special Master, we have divided these categories into three tiers. We have proposed to the Special Master the following deadlines for production of documents:

Tier I Categories
Tier II Categories

February 26, 2001
March 15, 2001

The Special Master has not yet approved our proposed schedule and it is possible that he will require us to meet a much shorter deadline. Therefore, it is essential that you begin to implement the plan for gathering responsive documents immediately.

Please note that these requests are for documents related to the Cobell litigation and, therefore, the phrase "trust records" means records relating to assets (land and/or money) held in trust for individual Indian beneficiaries.

To assist you and your staff in responding to the subpoena, we have prepared the attached proposed plan. You should distribute this plan to all offices and employees who are likely to have responsive information. When in doubt, please be over-inclusive in your search and production.

**PLAN FOR RESPONDING TO THE FEBRUARY 14, 2001
SUBPOENA BY THE SPECIAL MASTER TO
THE SECRETARY OF THE INTERIOR**

- I. INTERIOR WILL PROVIDE THIS PLAN AND THE ATTACHED SUBPOENA TO THE OFFICES CHARGED WITH RESPONDING TO THE REQUESTS. EACH OFFICE WILL IDENTIFY AN INDIVIDUAL RESPONSIBLE FOR CERTIFYING THAT HIS OR HER OFFICE HAS CONDUCTED A FULL SEARCH AND COMPLIED WITH THE INSTRUCTIONS SET FORTH IN THIS PLAN.**
- A. The certifying official will ensure that the document search has included all offices likely to contain responsive documents.
 - B. When in doubt, the certifying official will be over-inclusive in his search. Every attempt should be made to ensure that Interior has fully and fairly complied with the requests and the instructions in this plan.
 - C. If any questions arise during the search, employees should feel free to contact Michele Singer in the Office of the Solicitor (202-208-6996), Susan Offley in the Office of the Solicitor (202-208-6384), or Sarah Himmelhoch in the Department of Justice (202-514-0180).
 - D. All requests should be construed as seeking documents in either hard copy or electronic format. If there are two identical copies of the same document, only one copy needs to be produced. If, however, there are two copies of a document that differ because of handwritten notes, marginalia, or other writings, each copy should be produced.
 - E. Unless otherwise specified, employees generally should not create documents in response to these requests.
- II. THE RESPONSIBLE OFFICES WILL PROVIDE THEIR DOCUMENTS TO THE DOCUMENT MANAGER NO LATER THAN ONE WEEK BEFORE THE DESIGNATED DATE FOR PRODUCTION UNDER TIER 2 AND TIER 3 UNLESS A SHORTER TIME FRAME HAS BEEN APPROVED BY THE ACTING EXECUTIVE SECRETARY.**

III. INTERIOR WILL PROVIDE ALL TIER I DOCUMENTS ON OR BEFORE FEBRUARY 26, 2001.

Tier 1 requests are requests 1, 2, 12, 16, 19, 23, and 25. Work on the production of Tier 1 documents is already underway. The plan for locating and producing Tier 1 documents follows:

Request No. 1. All documents justifying the budgets for Fiscal Years 1999 through 2003

Each fiscal year, the Department of the Interior submits a document in support of the President's budget entitled "Budget Justifications." In response to this request, the Office of Special Trustee ("OST") will produce the OST Budget Justifications for Fiscal Years 1999, 2000, and 2001. The Department has not prepared Budget Justifications for Fiscal Years 2002 and 2003.

In addition, by March 2, 2001, the Office of the Assistant Secretary, Policy Management and Budget ("PMB") will produce, for House and Senate Appropriations Committee hearings for Fiscal Year 1999, Fiscal Year 2000, and Fiscal Year 2001, testimony of the Special Trustee and other Interior officials in support of budget requests relating to the Office of the Special Trustee or trust records management activities, including any written witness statements, oral testimony, and oral and written answers to Members' questions that are part of the Committee's hearing record.

In addition, as part of the Tier 2 production, PMB will produce for Fiscal Years 1999, Fiscal Year 2000, and Fiscal Years 2001, any documents provided to the House or Senate Appropriations Committees in support of supplemental funding or reprogramming requests for trust reform efforts

For purposes of this request, Interior will not search for or produce drafts of earlier budget justifications, emails or internal correspondence relating to the budget justifications, or notes of employees who worked on the budget justification.

Request No. 2 Copies of any Congressional report language accompanying all funds appropriated which impact the Office of Trust Records from 1999 forward

For purposes of this request, PMB will search for and produce any statutory language that increases, decreases, or otherwise alters the budget of the Office of Trust Records ("OTR") for fiscal years 1999 forward. In addition Interior will produce any congressional reports discussing statutory language that increases, decreases, or otherwise alters the budget of OTR for fiscal years 1999 forward.

Request No. 12 Copy of the telephone survey follow up conducted in December 1999 and January 2000 regarding records in jeopardy

For purposes of this request, the Solicitor's Office will produce a copy of the telephone survey conducted by OTR. We note a copy of this survey was provided to the Special Master previously. In addition, the Solicitor's Office will produce the records of follow ups taken to the telephone survey. We also note that these documents have been produced to the Special Master previously.

Request No. 16 Listing of all records sent to NARA by location. Please identify the specific Region/Agency sending the records, the types of records sent by each Region/Agency and the NARA locations to which they were sent

OTR has a list that identifies all SF135s and SF258s approved by OTR and, for those approved SF135s and SF258s, provides the information requested by the Special Master. OTR will provide that list and NARA's list of all BIA and OST records in all Federal Records Centers. Production of SF135s approved by OTR and box-level inventories attached to those SF135s will be provided if the Special Master so requests after reviewing the listing.

Request No. 19 Copies of the most recent FEDSIM report

For the purposes of this request, the Solicitor's Office will confirm that there have been no FEDSIM reports since the 1993 report by contacting the contracting officer for BIA and the National Business Center to determine whether they have any record of contracting with FEDSIM for purposes of conducting a records management study since 1993. In the meantime, Justice will provide a copy of the FEDSIM study that was submitted at trial.

Request No. 23 Copies of OST quarterly, semi-annual and annual reports to DOI or to Congress that impact trust records

The Office of Special Trustee ("OST"), in conjunction with PMB, will identify and submit any formal quarterly, semi-annual, or annual reports to Congress during Fiscal Years 1999, 2000, and 2001 that impact trust records. OST will also procure the annual financial audits of OST for Fiscal Years 1999, 2000, and 2001 and will produce the briefing book prepared for the new Secretary of the Interior.

Request No. 25 Mr. Rossman's November 1998 Report

As Mr. Rossman has testified, he did not prepare a report in November 1998. He did issue a draft report on January 4, 1999 and OTR will provide that report.

IV. INTERIOR WILL PROVIDE ALL TIER II DOCUMENTS ON OR BEFORE MARCH 15, 2001.

Tier II requests are requests 3, 4, 6, 7, 8, 9, 10, 11, and 15. The plan for locating and producing Tier II documents follows:

Request No. 3 Copies of all Financial Plans and Annual Work Plans prepared for Fiscal Years 1999 through 2001

For purposes of this request, OST will identify what documents it considers to be Financial Plans or Annual Work Plans for the fiscal years 1999 through 2001 and will produce those documents.

Request No. 4 Copies of Status of Obligation reports for the OTR program

Pursuant to the instructions provided by the Special Master on February 20, 2001, Interior will not provide the Status of Obligation reports. Rather, Interior will consult further with the Special Master to identify the documents sought in this request.

Request No. 6 All documents reflecting the current status of the imaging contract

In accordance with the instruction of the Special Master on February 20, 2001, OTR will produce the following documents:

1. The imaging contract entered into on November 29, 2000; and
2. The full file of the contracting officer's representative ("COR") for the November 29, 2000 imaging contract.

In addition, the Solicitor's Office will contact the National Business Center to determine whether it has any additional documents that describe the progress of work performed under the contract or money expended under the imaging contract entered into on November 29, 2000.

Request No. 7 Copies of the inventories of trust records stored in the Albuquerque warehouses

Based upon directions received from the Special Master at the February 20, 2001 meeting, OTR will produce the following:

1. electronic copies of all inventories or indices of trust records maintained by OTR in Albuquerque;

2. a statement describing the inventories and indices and what boxes they include, the method for controlling new boxes that have not yet been included in the inventories or indices, and the nature of the paper inventories contained in some of the boxes of trust records maintained by OTR in Albuquerque;

3. an identification of those indices or inventories that have been prepared by CDL.

Request No. 8' All documents reflecting any plans to update these inventories or to implement any new technology to assure inventory completeness

Based on instructions provided by the Special Master in the February 20, 2001 conference, OTR will produce the following documents in response to this request:

1. The evaluation of off-the-shelf software to be used in developing the inventory of boxes of trust records maintained by OTR in Albuquerque;
2. The requirements analysis for the purchase of the software to be used in developing the inventory of boxes of trust records maintained by OTR in Albuquerque;
3. The purchasing documents for the purchase of the software to be used in developing the inventory of boxes of trust records maintained by OTR in Albuquerque;
4. The installation plan for the installation of that software;
5. The implementation plan for that software;
6. The data conversion matrix for the inventories and indices related to trust records maintained by OTR in Albuquerque.

Request No. 9 Copies of all inventories prepared by CDL in their capacity as contractors to OTR

This response will be folded into our response to Request No. 7.

Request No. 10 A list of all third-party contractors engaged by OTR to assist with records management and a copy of all such contracts

OTR will provide a list of all entities or organizations other than agencies of the Department of the Interior that have been used by OTR to assist with records management since the beginning of Fiscal Year 1999. OTR will also produce a copy of any memorandums of understanding, contracts or purchase orders entered into with those entities or organizations.

Request No. 11 Copies of the Triage Report that was generated in 1999

OTR has indicated that it does not have any documents known as the Triage Report, but that this may be a reference to a project required by the Assistant Secretary – Indian Affairs in late 1999. BIA will search for and produce any document known to officials in the BIA's Central Office as a Triage Report that was prepared in 1999.

Request No. 15 Copies of all "pack and haul" reports

In accordance with instructions provided by the Special Master on February 20, 2001, the response to this request will also constitute OTR's response to the Special Master's letter of February 1, 2001. OTR understands the term "pack and haul" to refer to any incident in which OTR removes boxes or documents from a location and takes them to a facility for purposes of inventorying and organizing the documents before shipment to a Federal Records Center. To respond to this request, OTR will provide:

1. the information requested in the Special Master's letter of February 1, 2001, including a description of the criteria and procedures used for deciding when to do a "pack and haul" rather than a direct shipment to the Federal Records Centers;
2. a copy and a brief description of the documentation generated during a pack and haul;
3. any other documents (other than drafts), other than the regular monthly reports already provided to the Special Master and the Quarterly Reports submitted to the Court, that describe or discuss the procedures for deciding whether to perform a pack and haul or discuss the conduct or appropriateness of any particular pack and haul performed by OTR since the beginning of fiscal year 1999.

V. INTERIOR WILL PROVIDE ALL TIER III DOCUMENTS ON OR BEFORE APRIL 7, 2001.

Tier 3 requests are requests 5, 13, 14, 17, 18, 20, 21, 22, and 24. The plan for locating and producing Tier 3 documents follows:

Request No. 5 Copies of all requisitions submitted (whether purchased or not) for warehousing documents, accounting temps, bar coding, computers for staff, telephones and voice mail for staff; file cabinets/steel storage for the BIA regional and agency field offices; and CDL inventories

For purposes of this request OTR will search for and produce all requests for supplies and services received by or submitted by OTR during Fiscal Years 1999, 2000, or 2001 that seek the acquisition of accounting temps, bar coding, computers for staff, telephones and voice mail for staff; file cabinets/steel storage for the BIA regional and agency field offices; and CDL

inventories. The Department of Justice will seek clarification from the Special Master regarding what is meant by the term "warehousing documents."

Request No. 13 Copies of all disaster reports including, but not limited to, the Fort Belknap fire and the Fort Berthold water problems

Based on instructions provided by the Special Master at the February 20, 2001 conference, the Office of the Secretary will issue a directive to each agency of the Department of the Interior that handles trust records, including but not limited to OST, BIA, and the Solicitor's Office, to produce the following documents:

All documents (whether in paper or electronic form) containing information related to any incident that occurred in Fiscal Year 1999, 2000, or 2001, that places or placed trust records in jeopardy or potential jeopardy.

Interior will not search for or produce published reports, such as newspaper articles.

Request No. 14 Copies of all requests for records assistance by the BIA locations and OTR's responses thereto

The Office of the Secretary will issue a directive to each office that handles trust records to produce the following documents:

All documents (whether in paper or electronic form) that reflect a request by an agency that handles trust records for assistance from OTR or a response by OTR to such a request.

The search will be restricted to documents relating to requests made during fiscal year 1999 through the present.

Request No. 17 Copies of all policies and procedures, in final or in draft form, in place for records management for OST (e.g. the OST Manual)

OTR will provide all policies and procedures developed in Fiscal Years 1999, 2000, or 2001, as well as documents such as pamphlets or other instructional materials issued to Departmental employees or contractors regarding records management for OST that are not part of the ongoing development of policies and procedures described in the Department's Quarterly Reports or Breach Reports to the Court.

Request No. 18 Copies of all policies in final or in draft form for BIA replacing the BIAM 15 and 16

BIA will provide all policies and procedures developed in Fiscal Years 1999, 2000, or 2001, as well as documents such as pamphlets or other instructional materials issued to Departmental employees or contractors regarding records management for BIA that are not part

of the ongoing development of policies and procedures described in the Department's Quarterly Reports or Breach Reports to the Court.

Request No. 19 Copies of all polices and procedures, whether in draft or final form, concerning the Indian trust record policies of MMS, BLM or any other DOI agency

The Office of the Secretary will issue a directive to all offices that handle trust records to search for and produce all policies and procedures developed in Fiscal Years 1999, 2000, or 2001, as well as documents such as pamphlets or other instructional materials issued to Departmental employees or contractors regarding records management for BIA that are not part of the ongoing development of policies and procedures described in the Department's Quarterly Reports or Breach Reports to the Court.

Request No. 21 Copies of all records management training courses that have been developed by OTR

OST will produce all documents in its custody that constitute materials used in the presentation of training on the maintenance and management of trust records developed in fiscal year 1999 or later, including:

1. any handouts or materials presented at training sessions provided by OTR to its own staff, to tribal staff, or to the staff of other agencies of the Department of the Interior;
2. any materials prepared by Dick Fitzgerald or the Solicitor's Office for use in training employees on trust principles related to document management;
3. any videos, transcripts, sign-in sheets, or other records of the proceedings during any training sessions related to records management provided by OTR to tribal staff or to the staff of other agencies of the Department of the Interior.

Request No. 22 A report of all records management training sessions held to date for OTR staff and a list of the participants of this training by location

OTR will produce any documentation developed in fiscal year 1999 or later, other than the regular monthly reports to the Special Master or the Quarterly Reports submitted to the Court, that document the provision of training by OTR to its own staff related to records management. OTR will include sign-in sheets, as well as any other records that reflect that the training was actually given and who attended that training during fiscal year 1999 or later.

Request No. 24 Notes taken by OTR staff during site visits and drafts of site visit reports in electronic or hard copy since January 1999

OTR will direct each member of its staff that has conducted a site visit to search his or her files (including electronic files) for any documents generated by him or her relating to site visits to inspect or evaluate trust records management or conditions at any agency or tribal offices since January 1999.

**Attachment B to the Subpoena Duces Tecum
Supplemental Document Request**

You are commanded to produce and permit inspection and copying of the following documents:

1. Any and all "Concept Papers" (see definition below) and/or other documents drafted in preparation of HLIP 2000 Records Management Sub-Projects G, I, K, L, M, N, P, Q, R, S, T, U, W, X, Z, AA, BB, CC, DD, GG, and HH.
 2. Any and all budget plans, proposals, outlines and/or other financial documents drafted in preparation of or relating to HLIP 2000 Records Management Sub-Projects L, M, R, S, AA, BB, CC, DD, GG, and HH.
 3. Any and all documents reflecting or describing the agency's strategy, goals or plans for completing HLIP 2000 Records Management Sub-Projects L, M, R, S, AA, BB, CC, DD, GG, and HH.
 4. Any and all documents drafted in preparation of or relating to the major milestones, deadlines, timeframes and/or priorities established for the completion for HLIP 2000 Records Management Sub-Projects L, M, R, S, AA, BB, CC, DD, GG, and HH.
 5. Any and all interim reports relating to HLIP Records Management Sub-Projects L, M, R, S, AA, BB, CC, DD, GG, and HH.
 6. Any and all budget plans, proposals, outlines and/or other financial documents drafted in preparation of or relating to completed HLIP2000 Records Management Sub-Projects G, I, P, Q, T, U, W and X.
 7. Any and all documents outlining the agency's strategies, goals or plans undertaken in completing HLIP 2000 Records Management Sub-Projects G, I, P, Q, T, U, W, X, and Z.
 8. Any and all documents concerning the major milestones, deadlines, timeframes and/or priorities utilized by the agency in completing HLIP 2000 Records Management Sub-Projects G, I, P, Q, T, U, W and X.
 9. Any and all final reports submitted to the Department of Interior for completed HLIP 2000 Records Management Sub-Projects G, I, K, N, P, Q, T, U, W, X, and Z.
 10. Any and all documents describing the actions taken by the agency following the completed initiation of HLIP 2000 Records Management Sub-Projects G, I, N, P, T, Q, U, W, and X.
 11. Any and all documents reflecting the agency's analysis of its record storage requirements (HLIP 2000 Records Management Sub-Project P).
-

**Attachment B to the Subpoena Duces Tecum
Supplemental Document Request**

12. Any and all documents reflecting the criteria to be used by teams beginning the "cyclic evaluation of records program" concerning HLIP 2000 Records Management Sub-Project T and any and all documents reflecting any consultation with any non-governmental entity concerning HLIP 2000 Records Management Sub-Project T .
13. Any and all documents reflecting the criteria used to identify locations containing historical records (HLIP 2000 Records Management Sub-Project W).
14. Any and all documents describing the trust records policies and procedures as contemplated in HLIP 2000 Records Management Sub-Project X.
15. List of contact people within MMS, BLM and OHA whom the agency has contacted to review trust records policies and procedures (HLIP 2000 Records Management Sub-Project X) and all documents reflecting the criteria for maintaining "ongoing communication."
16. Any and all comments received, regardless of form, in response to the published proposed regulations for contracted and compacted trust records. (HLIP 2000 Records Management Sub-Project Z).
17. A copy of the plan being utilized by OTR to "systematically purchas[e] appropriate storage devices for current records." See Attachment 5 to March 15, 2001 Letter to Alan Balaran.
18. A copy of the memorandum issued on May 26, 1999 from the Deputy Commissioner of Indian Affairs to BIA line officers at the Central Office and field levels requesting a description of the physical condition as well as the subject, date, and types of records considered to be in harmful or deteriorating condition.
19. A copy of all documents provided in response to the memorandum of May 26, 1999 referenced in request no. 18.
20. A copy of any and all follow-up surveys and/or analyses generated by the agency in response to the responses produced in requests nos. 18 and 19
21. Any and all drafts of documents described in Request 1 - 20.

**Attachment B to the Subpoena Duces Tecum
Supplemental Document Request**

Definitions:

For the purpose of this subpoena, the following definitions apply:

- a. "Budget plans, proposals and outlines" means and includes either formal or informal estimates, predictions and/or limits for the funding of any of the goals, programs, action plans, projects, Sub-Projects, tasks and milestones set out in the HLIP 2000 Records Management Sub-Project.
- b. "Concept Papers" means, includes and refers to any and all written documents used by the agency to plan, develop or to prepare any of the programs, action plans, projects, Sub-Projects, tasks and milestones set out in the HLIP 2000 Records Management Sub-Project.
- c. "Document" means and includes any kind of written, typewritten, printed, or electronically, mechanically, or photographically retrievable material whatsoever, including, but not limited to, papers, agreements, contracts, notes, memoranda, correspondence, letters, telegrams, statements, books, reports, minutes, records, accounting books, computer discs, electronic mail, diagrams, photographs, analyses, studies, transcriptions, court orders, charts, drawings, forms, studies, calendar and diary entries, pamphlets, graphs, tabulations, and records of which you have knowledge or information, and includes all non-identical copies thereof. Where not plainly indicated, please identify the author(s) of all documents submitted.
- d. "Agency" refers to the Department of the Interior and its sub-organizations including the Bureau of Indian Affairs, the Mineral Management Service and the Bureau of Land Management; the Office of the Special Trustee and any of its sub-organizations including the Office of Trust Records and the Office of Trust Fund Management



U.S. Department of Justice

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March 30, 2001

By Facsimile and U.S. Mail

Alan Balaran, Esq.
Special Master
1717 Pennsylvania Avenue, N.W.
12th Floor
Washington, D.C. 20006

Re: Cobell v. Babbitt, Civil Action No. 96-1285

Dear Mr. Balaran:

I am writing regarding the document entitled "Attachment B to the Subpoena Duces Tecum Supplemental Document Request" which you provided to us at a meeting on March 26, 2001. As we discussed during that meeting, I am writing to inform you whether the Department of the Interior will be objecting to the subpoena and to propose a date for the production of the requested documents.

First, as you know, I spent the majority of this week in Albuquerque, New Mexico working with the staff of the Office of Trust Records ("OTR") and other Interior employees on the Tier III document production pursuant to your February 14, 2001 subpoena. While in Albuquerque, I distributed a copy of your Attachment B to Mr. Rossman, Ms. Meisner, and other employees at OTR. In addition, as you can see from the attached memorandum, on March 27, 2001, the Solicitor's Office distributed your Attachment B to the senior contacts for the subpoena.

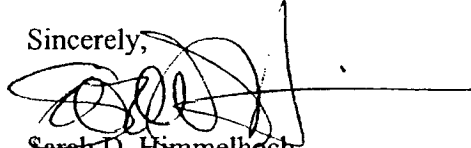
I have consulted with Interior and, based upon those consultations, will be drafting a production plan. In that production plan, I will provide the agency with instructions on how to comply with the subpoena and propose that it complete the collection, copying, and production of the documents in accordance with my instructions on or before **May 11, 2001**. I make this proposal to allow Interior sufficient time to collect the documents. While some of the requests are targeted at select offices within Interior, some of your requests, such as 19, 20, and 21, require us to contact a number of offices. Moreover, in proposing this production date, I have also taken into consideration the time it will take to complete the Tier III production, as well as the time it will take to complete certain tasks due under the HLIP.

Second, I am writing to inform you that we intend to object to certain of the requests in the subpoena. I understand that you spoke with Mr. Phillip Brooks and indicated that you would like any such objection filed on Tuesday, April 3, 2001. Respectfully, I request that you allow Interior the full time allowed pursuant to Federal Rule of Civil Procedure 45, which generally provides a party 14 days to serve written objections to a document subpoena. Accordingly, I propose that Interior be permitted to file its objections on or before April 9, 2001. This additional time will ensure that Interior has time to analyze the subpoena and, perhaps, narrow its objections.

Let me assure you, however, that we will not delay our efforts to comply with the subpoena while we await a ruling on our objections. Rather, as we discussed during our meeting on Monday, March 26, 2001, Interior is developing its production plan and will shortly circulate that plan with instructions to comply with the subpoena on May 11, 2001 or at the date set by you.

I appreciate your attention to this matter.

Sincerely,



Sarah D. Himmelhoch

cc: Dennis Gingold, Esq. (by facsimile, 202-318-2372)
Sabrina McCarthy (by facsimile, 202-219-0559)



U.S. Department of Justice

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April 12, 2001

BY FACSIMILE AND U.S. MAIL

Alan Balaran, Esq.
Special Master
1717 Pennsylvania Avenue, N.W.
12th Floor
Washington, D.C. 20006

Re: Cobell v. Babbitt, Civil Action No. 96-1285

Dear Mr. Balaran:

After receipt of your Attachment B on March 26, 2001, I forwarded copies of the attachment to key individuals at Interior. After those individuals had an opportunity to review the document, on April 4, 2001, I attended a meeting with Susan Offley, Ken Rossman, Kay Hayes, Debbie Meisner, Charles Breece, Michele Singer, Jim Douglas, Ted Weir, Carlos Berrios, Anne Ewell, Sue Stephens, and Art Gary. After that meeting, I and the attorneys in the Solicitor's Office conducted further discussions and analysis with additional individuals, such as Fay Iudicello, Acting Director of the Executive Secretariat.

Based on these consultations with the client, I prepared a plan and set of instructions for the production of documents pursuant to Attachment B. That plan is attached for your review and information.

I appreciate your attention to this matter.

Sincerely,

Sarah D. Himmelhoch

cc: Dennis Gingold, Esq. (by facsimile)
Sabrina McCarthy (by facsimile)



U.S. Department of Justice

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April 12, 2001

MEMORANDUM

To: Tom Slonaker, Special Trustee
Jim Douglas, Chief of Staff, Office of Special Trustee
Sharon Blackwell, Deputy Commissioner for Indian Affairs
Arthur Gary, Acting Director, Trust Management Improvement Project
Sue Ellen Wooldridge, Deputy Chief of Staff
Robert Lamb, Deputy Assistant Secretary, Policy, Management and Budget
Fay Iudicello, Acting Director of the Executive Secretariat
Tim Elliott, Acting Deputy Solicitor

Through: Sabrina McCarthy, Assistant Solicitor

From: Sarah Himmelhoch, Senior Counsel, U.S. Department of Justice 

Re: Cobell v. Norton: Response to Subpoenas Issued by the Special Master

Thank you all for your hard work in complying with the three tiered production under the subpoena served by the Special Master on February 14, 2001. As most of you probably know, on March 26, 2001, the Special Master supplemented the requests in that subpoena with 21 additional requests. I am writing now to provide instructions in responding to those additional requests. You should distribute this plan to all offices and employees who are likely to have responsive information.

Please note that, although, I have proposed a production date of **May 11, 2001**, the Special Master has not yet approved our proposed schedule and it is possible that he will require us to meet a much shorter deadline. Therefore, it is essential that you begin to implement the plan for gathering responsive documents as quickly as possible.

Finally, as with the first three productions under this subpoena, I look forward to receiving the certifications by each designated individual at the conclusion of the production.

**PLAN FOR RESPONDING TO ATTACHMENT B TO THE FEBRUARY 14, 2001
SUBPOENA BY THE SPECIAL MASTER TO
THE SECRETARY OF THE INTERIOR**

I. GENERAL INSTRUCTIONS

The Office of the Solicitor will distribute this plan to each office and bureau that is identified in the following plan as having responsibility for searching and producing documents. The distribution of the plan will be accompanied by instructions to complete certifications substantially similar to those completed for the first three tiers of production made pursuant to this subpoena.

When in doubt, the certifying official should be over-inclusive in his search. Every attempt should be made to ensure that Interior has fully and fairly complied with the requests and the instructions in this plan.

If any questions arise during the search, employees should feel free to contact

| | |
|---|--------------|
| Michele Singer in the Office of the Solicitor | 202-208-6996 |
| Susan Offley in the Office of the Solicitor | 202-208-6384 |
| Sarah Himmelhoch in the Department of Justice | 202-514-0180 |

All requests should be construed as seeking documents in either hard copy or electronic format. If there are two identical copies of the same document, only one copy needs to be produced. If, however, there are two copies of a document that differ because of handwritten notes, marginalia, or other writings, each copy should be produced.

Please bear in mind the Special Master has defined document to mean:

any kind of written, typewritten, printed, or electronically, mechanically, or photographically retrievable material whatsoever, including, but not limited to, papers, agreements, contracts, notes, memoranda, correspondence, letters, telegrams, statements, books, reports, minutes, records, accounting books, computer discs, electronic mail, diagrams, photographs, analyses, studies, transcriptions, court orders, charts, drawings, forms, studies, calendar and diary entries, pamphlets, graphs, tabulations, and records of which you have knowledge or information, and includes all non-identical copies thereof. Where not plainly indicated, please identify the author(s) of all documents submitted.

The Special Master has also defined other terms related to the requests and you should consult the third page of Attachment B and familiarize yourself with those definitions.

At the request of the Special Master, please make sure your target sheets identify the author of the document unless it is obvious from the document itself.

Unless otherwise specified, employees generally should not create documents in response to these requests.

We have already produced the administrative record prepared in support of the original HLIP, and therefore, employees producing documents responsive to these requests should focus on documents generated between July 1998 and May 4, 2001.

In addition, this search will be structured to require searching only in the offices responsible for development and implementation of the referenced milestones, i.e. Office of the Special Trustee ("OST"), Office of Trust Records ("OTR"), Office of Policy Management and Budget ("PMB"), and Office of the Solicitor, and the core individuals responsible for the coordination of the HLIP-2000. These core individuals are Tom Gernhofer, William Bettenberg, and LeRon Bielak. In addition, Interior will search the files of Linda Richardson, who coordinated the First Quarterly Report.

These requests are for documents related to the Cobell litigation and, therefore, the phrase "records" means records relating to assets (land and/or money) held in trust for individual Indian beneficiaries. When in doubt, please be over-inclusive in your search and production.

If you pulled and produced a document to the Solicitor's Office in the course of responding to the Tier 1, 2, or 3 production for the February 14, 2001 subpoena, do not reproduce the document for purposes of this production.

For documents produced under Special Master requests other than the February 14, 2001 subpoena please do not produce the document. Instead, prepare a list of each such document identifying the author, title, and date of the document as well as the date on which you produced the document to the Special Master. That list should be treated as a responsive document and submitted with a target sheet.

II. INTERIOR WILL PROVIDE ALL RESPONSIVE DOCUMENTS ON OR BEFORE MAY 11, 2001.

Request No. B-1 Any and all "Concept Papers" (see definition below) and/or other documents drafted in preparation of HLIP 2000 Records Management Sub-Projects G, I, K, L, M, N, P, Q, R, S, T, U, W, X, Z, AA, BB, CC, DD, GG, HH

The Special Master has defined "concept papers" to mean "any and all written documents used by the agency to plan, develop, or to prepare any of the programs, action plans, projects, Sub-Projects, tasks and milestones set out in the HLIP 2000 Records Management Sub-Project." He has instructed us that he is attempting to find any documents that constitute the basis for why we chose the dates and approaches that we did and how we intend to meet the commitments set forth in the plan.

To comply with this request, the Solicitor's Office, OTR, and OST will each search for and produce responsive documents, including drafts. In addition, the Office of Policy, Management and Budget ("PMB") will search the files of the core individuals.

Request No. B-2 Any and all budget plans, proposals, outlines, and/or other financial documents drafted in preparation of or relating to HLIP 2000 Records Management Sub-Projects L, M, R, S, AA, BB, CC, DD, GG, and HH.

In our meeting with the Special Master, he made it clear that the use of "budget plans" was not intended to limit this request for documents related to the congressional budget. Rather, the Special Master is seeking financial planning documents, either formal or informal, that relate to the designated sub-projects.

To comply with this request, the Solicitor's Office, OTR, and OST will each search for and produce responsive documents, including drafts. In addition, PMB will search the files of the core individuals and any other files likely to have responsive documents.

Request No. B-3 Any and all documents reflecting or describing the agency's strategy, goals, or plans for completing HLIP-2000 Records Management Sub-Projects L, M, R, S, AA, BB, CC, DD, GG, and HH

To comply with this request, the Solicitor's Office, OTR, and OST will each search for and produce responsive documents, including drafts. In addition, PMB will search the files of the core individuals and any other files likely to have responsive documents.

Request No. B-4 Any and all documents drafted in preparation of or relating to the major milestones, deadlines, timeframes, and/or priorities established for the completion for HLIP 2000 Records Management Sub-Projects L, M, R, S, AA, BB, CC, DD, GG, and HH

To comply with this request, the Solicitor's Office, OTR, and OST will each search for and produce responsive documents, including drafts. In addition, PMB will search the files of the core individuals and any other files likely to have responsive documents.

Request No. B-5 Any and all interim reports relating to HLIP Records Management Sub-Projects L, M, R, S, AA, BB, CC, DD, GG, HH

To comply with this request, the Solicitor's Office, OTR, and OST will each search for and produce responsive documents, including drafts. In addition, PMB will search the files of the core individuals and any other files likely to have responsive documents.

Request No. B-6 Any and all budget plans, proposals, outlines and/or other financial documents drafted in preparation of or relating to completed HLIP 2000 Records Management Sub-Projects G, I, P, Q, T, U, W and X

To comply with this request, the Solicitor's Office, OTR, and OST will each search for and produce responsive documents, including drafts. In addition, PMB will search the files of the core individuals and any other files likely to have responsive documents.

Request No. B-7 Any and all documents outlining the agency's strategies, goals or plans undertaken in completing HLIP 2000 Records Management Sub-Projects G, I, P, Q, T, U, W, X and Z.

To comply with this request, the Solicitor's Office, OTR, and OST will each search for and produce responsive documents, including drafts. In addition, PMB will search the files of the core individuals and any other files likely to have responsive documents.

Request No. B-8 Any and all documents concerning the major milestones, deadlines, timeframes and/or priorities utilized by the agency in completing HLIP 2000 Records Management Sub-Projects G, I, P, Q, T, U, W, and X.

To comply with this request, the Solicitor's Office, OTR, and OST will each search for and produce responsive documents, including drafts. In addition, PMB will search the files of the core individuals and any other files likely to have responsive documents.

Request No. B-9 Any and all final reports submitted to the Department of the Interior for completed HLIP 2000 Records Management Sub-Projects G, I, K, N, P, Q, T, U, W, X and Z.

To comply with this request, the Solicitor's Office, OTR, and OST will each search for and produce responsive documents, including drafts. In addition, PMB will search the files of the core individuals and any other files likely to have responsive documents.

Request No. B-10 Any and all documents describing the actions taken by the agency following the completed initiation of HLIP 2000 Records Management Sub-Projects G, I, N, P, T, Q, U, W, and X.

To comply with this request, the Solicitor's Office, OTR, and OST will each search for and produce responsive documents, including drafts. In addition, PMB will search the files of the core individuals and any other files likely to have responsive documents.

Request No. B-11 Any and all documents reflecting the agency's analysis of its record storage requirements (HLIP 2000 Records Management Sub-Project P).

To comply with this request, the Office of the Solicitor will direct each office responsible for handling trust records, including but not limited to the Solicitor's Office, BIA, OST (including OTR), PMB, MMS, BLM, and OHA, to search for documents identifying document storage requirements for documents within that agency's custody. Bear in mind that the term "documents" includes both paper and electronic records. Also bear in mind that you need only produce documents related to the storage requirements for trust records. If, however, you have a more general document that discusses storage requirements for both trust and non-trust records, you must produce that document. Also remember that you must produce drafts of any responsive documents.

Request No. B-12 Any and all documents reflecting the criteria to be used by teams beginning the "cyclic evaluation of records program" concerning HLIP 2000 Records Management Sub-Project T and any and all documents reflecting any consultation with any non-governmental entity concerning HLIP 2000 Records Management Sub-Project T.

To comply with this request, OTR will search for all documents that are used by the teams that perform site visits to define what areas they are supposed to examine, what questions are to be asked, what information is to be recorded, and any guidance as to steps to be taken during a site visit report. In addition, based upon instructions provided by the Special Master in a telephone conversation on April 9, 2001, OTR will provide all documents relating to individuals or companies that OTR consulted in deciding who would conduct the site visits, how the priorities for site visits would be set, and what criteria, forms, or guidance would be used by the individuals conducting the site visits. OTR will also produce drafts of responsive documents.

Request No. B-13 Any and all documents reflecting the criteria used to identify locations containing historical records (HLIP 2000 Records Management Sub-Project W).

To comply with this request, OTR will search for and produce all documents, including drafts, relating to its development and implementation of the HLIP-2000 Records Management Sub-Project, Milestone W.

Request No. B-14 Any and all documents describing the trust records policies and procedures as contemplated in HLIP 2000 Records Management Sub-Project X.

I have informed the Special Master that we believe this request has been satisfied by the production of documents responsive to requests 17-20 in Attachment A to the February 14, 2001 subpoena.

Request No. B-15 List of contact people within MMS, BLM and OHA whom the agency has contacted to review trust records policies and procedures (HLIP 2000 Records Management Sub-Project X) and all documents reflecting the criteria for maintaining "on-going communication."

To comply with this request, OTR will search for and produce all documents, including drafts, relating to its efforts to implement HLIP 2000 Records Management Sub-Project, Milestone X.

Request No. B-16 Any and all comments received, regardless of form, in response to the published proposed regulations for contracted and compacted trust records (HLIP 2000 Records Management Sub-Project Z).

To comply with this request, BIA will produce in electronic form the formal rule-making record for the referenced regulations, which will include all comments received within the public comment period.

Request No. B-17 A copy of the plan being utilized by OTR to "systematically purchas[e] appropriate storage devices for current records." See Attachment 5 to March 15, 2000 Letter to Alan Balaran.

To comply with this request, OTR will search for and produce all documents, including drafts, relating to the purchase of storage devices for BIA agency or area offices.

Request No. B-18 A copy of the memorandum issued on May 26, 1999 from the Deputy Commissioner of Indian Affairs to BIA line officers at the Central Office and field levels requesting a description of the physical condition as well as the subject, date, and types of records considered to be in harmful or deteriorating condition.

This document was produced in response to Tier 3. You do not need to produce it again.

Request No. B-19 A copy of all documents provided in response to the memorandum of May 26, 1999 referenced in request No. [B-]18.

The senior contacts for the Attachment A production pursuant to this subpoena inform me that all responsive documents have been produced. You do not need to produce those documents again. The Solicitor's Office will, therefore, request confirmation from the BIA senior contact that he is not aware of any documents that are responsive to this request that have not yet been produced in response to the subpoena.

Request No. B-20 A copy of any and all follow-up surveys and/or analyses generated by the agency in response to the responses produced in requests nos. [B-]18 and [B-]19.

The senior contacts for the Attachment A production pursuant to this subpoena inform me that all responsive documents have been produced. You do not need to produce those documents again. The Solicitor's Office will, therefore, request confirmation from the BIA senior contact that he is not aware of any documents that are responsive to this request that have not yet been produced in response to the subpoena.

Request No. B-21 Any and all drafts of documents described in Request [B-]1 - [B]-20.

This request has been addressed in the preceding instructions.

**OFFICE OF TRUST RECORDS
INDIAN AFFAIRS RECORDS MANAGEMENT
REPORT**

PURPOSE: Southern Pueblos Agency Records Assessment and Evaluation Report

REVIEW DATE: 4/27/00

CONTACT PERSONS: Flo Gutierrez, Superintendent
Marlene Bruner, Administrative Manager
Marie Chee, General Supply Specialist

On April 27, 2000, the team members: Mary Jo Smith, Alley David, and Lori Curtis, Indian Affairs Records Management staff met with Flo Gutierrez, Superintendent, Marlene Bruner, Administrative Manager, and Marie Chee, General Supply Specialist of the Southern Pueblos Agency (SPA). The meeting was to introduce the staff and explain our visit concerning an evaluation of the agencies' records management and an assessment of the records.

BACKGROUND HISTORY:

Records Assessment

The initial records assessment for SPA was on January 31, 2000, Mark Ferguson, National Archives and Records Administration (NARA), Ken Russell, Southwest Regional Office (SWRO), and Lori Curtis met with the SPA staff. Present at the meeting were Flo Gutierrez, Superintendent, Marlene Bruner, Administrative Officer/Records Manager, as well as various program managers. Ms. Gutierrez and others discussed the records situation at SPA and requested the following:

- Assistance in clearing out older records from SPA's basement;
- Future records management training for SPA staff (1/2 day);
- Copies of finding aids and SF-135 transmittal forms for records sent to the NARA, Rocky Mountain Region in Denver.

SPA had records stored in two basement areas. The first area (the "east basement") had been cleaned out some, but there were still a number of file cabinets and supply cabinets full of records. SPA was willing to provide assistance from program experts to identify the types of records in the two basement areas.

Records Clean-Up Project

On January 31, we toured the east and west basement areas and took note of the types of records occupying these spaces. They included irrigation and water rights documents, Indian census records, employment assistance case files, disposable

administrative records, old correspondence (including a Photostat of an 1867 diary written by a frontier U.S. Army soldier stationed by this reservation), photographs and slides, land titles, contracts, realty, and other miscellaneous record series.

The basement areas were unsuitable for continued records storage. The east basement had water pipes running up and down along the walls and ceiling, and there were window wells where insects can get into the room. The west basement was hot, dusty, and contained boiler equipment. The SPA building itself is very old, and expected to be condemned.

On February 3-4, 2000, Mark Ferguson (NARA), Lori Curtis, Alley David, Mary Jo Smith, Kessler BigPond, and Julia Chavez, Indian Affairs Records Management team returned to SPA, to begin packing records for transfer to NARA. A total of 78 cubic feet of records were boxed up, palletized, and shipped to NARA. These consisted of 72 boxes of permanent employment assistance case files and five boxes of permanent school records. The records will be inventoried by NARA or contractor staff and then transferred directly to the custody of the National Archives. Ms. Bruner signed the appropriate SF-258's to complete the transfer.

The other records described above were left behind; some will be processed and packed out at a later date, and others will be moved to other local storage. However, among those remaining record series are a number of documents that are pertinent to ongoing water and land rights cases. Some of the records date back to the earliest part of the 1900's, but we were told that they are frequently researched by the SWRO's Water Rights Program. They include records created by SPA but also by other agency offices as well and are located at SPA because they were created under the old United Pueblos Agency organization. Art Martinez, Hydrologist with the Water Rights Program, and contract historian Dr. Hana Samek Norton visited the SPA building during the clean out project. They expressed a desire to retain the records at the SWRO, and said that the records would be moved to a more suitable space in Albuquerque. Therefore, these records were not included in the clean out work.

Records Management Evaluation

On April 27, 2000, Lori Curtis and Mary Jo Smith met with Marie Chee, Records Management Liaison to conduct the evaluation questionnaire (attached). The Agency has done an excellent job in maintaining their on-site records. They have shipped remaining inactive SPA records to NARA, coordinated with the SWRO and other involved agencies regarding the Water Rights Records, and continue to clean up records. Marie Chee has submitted a Records Management Plan (attached).

Exit Interview: Conducted with Flo Guiterrez, Superintendent and Marlene Bruner, Administrative Manager

Lorian M. Curtis, Mary Jo Smith, and Alley David, Records Management Specialist

were particularly at risk. This information was supplemented by site visit reports from the Special Master in Cobell v. Babbitt in April and again in November 1999. The IARM staff conducted a survey from November 1999 through February 2000, to acquire additional first hand reports. Records management specialists were sent to some sites to implement cleanup because of these findings. The Bureau of Indian Affairs also required a detailed report on records storage conditions from each superintendent and each regional director in December 1999, (see Section Q) and records management specialists participated in this information gathering in three regions. All of this information is being used to establish priorities for the long-range cleanup. It has also been used to take immediate remedial action, for example, at Zuni, Anadarko, and Fort Totten. This task calls for records management specialists to visit every office to identify needs and implement the steps to complete an inventory of all records at hand and to recommend and implement specific actions needed to safeguard their preservation or to carry out properly authorized disposition. *Completion is expected by May 2002.*

J. Complete Systematic Centralization of OST Financial Trust Records

This project was initiated in 1996. It involves the on-site retrieval of OST

financial trust records from OST offices and BIA areas and agencies. Combined with the IIM administrative jacket folders brought to Albuquerque by the Office of Trust Funds Management in 1997 - 1999, more than 19,000 boxes of IIM trust records (47.5 million pages) are now in proper storage and inventoried in Albuquerque. *The systematic centralization of trust financial records was completed on October 8, 1999, with the exception of 4 agencies referenced below. Additional trust financial documents may be located as a result of other activities including this subproject (for example, the inventory and cleanup tasks). In addition, on-going documentation (i.e., new trust financial records) will be periodically transferred from the field to the OST records facilities.*

K. Hire Records Management Specialists

An integral part of the reform effort is to develop a cohesive corps of trained records management professionals to serve both BIA and OST. The Indian Affairs Records Management program has selected 12 new records specialists to serve as the core team members of this project. The vacancy announcement for these positions was posted in June 1999. *The last of the 12 new record specialists was hired and reported for duty in January 2000.*

02/28

NOTE

Ken Rossman
02/28/2000 05:12 PM

To: Tom Gernhofer/PMB/OS/DOI@DOI, LeRon Bielak/PPP/OS/DOI@DOI, Thomas Thompson@DOI
cc:

Subject: HLIP Records Management

I will sign as is, but if minor corrections can still be made I suggest the following in order of importance:

Item O: The names of the tribes should be spelled out: Pine Ridge Agency (Oglala Sioux Tribe), Standing Rock Agency (Standing Rock Sioux Tribe), Umatilla Agency (Confederated Tribes of the Umatilla Indian Reservation), and Red Lake Agency (Red Lake Band of Chippewa Indians of Minnesota).

Sorry, we should have caught this one before. Full text should be:

OK

Three Tribes have registered objections to removal of the active IIM jackets folders from their local IIM office to Albuquerque for cleanup by DataCom Sciences, Inc., and storage in the OST records centers. Tribal leadership cites previous problems when valuable files were removed from the Agency. The three are: Pine Ridge Agency (Oglala Sioux Tribe), Standing Rock Agency (Standing Rock Sioux Tribe), and Umatilla Agency (Confederated Tribes of the Umatilla Indian Reservation). A fourth agency, the Red Lake Agency (Red Lake Band of Chippewa Indians of Minnesota), retains trust financial records but not IIM jacket folders. Attempts to date to reach a suitable, mutually agreeable solution that meets the operational needs of both the Tribes and the Department have not been successful. Discussions have taken place, but as yet, no resolution has occurred.

Note addition also of "from their local IIM office: in first sentence if possible. It's a useful distinction previously submitted but not in the current text. It emphasizes these are Government records.

Item K: Change to January 2000. As told earlier to LeRon, we actually did not make the 12th successful selection until early January (as we had individuals decline and one resign). The 12th person was hired in January. We actually had 12 here for the first time in February. I think the hired date is the operative one.

Change Milestone for K also consistent with text.

Item G: There is no "Director, Indian Affairs Records Management;" it's a program not an organization. Suggest delete "Director," or change to Director, Office of Trust Litigation Support and Records if necessary to address John Berry concern.

Item G: There is also a tense problem in the first sentence. It should read "OST and BIA developed separate...."

MC

Item M: Item is stronger if "is expected to be initiated and" is deleted from last sentence. No comma needed after personnel.

Item B: add word "legal" before word custody, sixth line up from end. This is to distinguish from physical custody, an important distinction in records.

Ken